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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

SERHIY PETROVICH DYSHLYUK;
SVITLANA VLADIMIROVNA
DYSHLUK,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 06-74653

Agency Nos. A098-520-450
A098-520-451

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted February 18, 2009^{**}

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

Serhiy Petrovich Dyshlyuk and his wife, natives and citizens of Ukraine,
petition for review of a Board of Immigration Appeals' order dismissing their

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

appeal from an immigration judge's decision denying their application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252. We review the agency's factual findings for substantial evidence, *INS v. Elias-Zacarias*, 502 U.S. 478, 481 n.1 (1992), and we deny the petition for review.

Substantial evidence supports the agency's conclusion that Dyshlyuk's interrogation regarding the theft of military equipment did not constitute persecution on account of a protected ground. *See Dinu v. Ashcroft*, 372 F.3d 1041, 1044-45 (9th Cir. 2004); *cf. Grava v. INS*, 205 F.3d 1177, 1181 (9th Cir. 2000). Substantial evidence also supports the agency's finding that Dyshlyuk's fear of future persecution lacked an objective basis. *See Nagoulko v. INS*, 333 F.3d 1012, 1018 (9th Cir. 2003). Accordingly, Dyshlyuk's asylum claim fails.

Because Dyshlyuk did not establish asylum eligibility, it necessarily follows that he did not satisfy the more stringent standard for withholding of removal. *See Zehatye v. Gonzales*, 453 F.3d 1182, 1190 (9th Cir. 2006).

Substantial evidence supports the agency's denial of CAT relief because Dyshlyuk failed to show it is more likely than not he will be tortured if returned to Ukraine. *See Hasan v. Gonzales*, 380 F.3d 1114, 1122-23 (9th Cir. 2004).

PETITION FOR REVIEW DENIED.